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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/751,065	01/05/2004	Robert John Swensen		1268

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EXAMINER

STASHICK, ANTHONY D

ART UNIT	PAPER NUMBER
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3728

DATE MAILED: 08/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/751,065

Applicant(s)

SWENSEN, ROBERT JOHN

Examiner

Anthony Stashick

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 January 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the lateral arch support, the rigid metatarsal arch support and the varying heights of the medial arch support on the same insole, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irwin et al. 4,520,581 in view of either of Phillips 4,791,736 or Holscher 2,095,191. Irwin et al. '581 discloses all the limitations substantially as claimed including the following: a varying medial longitudinal arch (see Figure 7 at 10a) constructed in four varying degrees of arch height; a biomechanically shaped weight-bearing support insole that cooperates with all three arches, the heel and the bone structure of the foot providing weight bearing support (see col. 7, line 24 through col. 9 line 55); a support system for the lateral longitudinal arch (see Figure 8); a support

Art Unit: 3728

system for the transverse arch (portion in 10 d as well as medial side wall in metatarsal area as shown in Figure 7); four varying medial arch degrees which extend inwardly along the medial side portions to provide the correct maximum support beneath the selected medial area of the user's foot helping prevent pronation (see Figure 7 at 10a as well as co. 7, line 24 through col. 9, line 55); the degree of the medial arch is dependent on the length of the insole as well as the size accommodating the curvatures of the bone structure (see Figure 7, along the length of the insole); a weight-bearing fit for any shoe or boot (the insole placed within a shoe or boot); a substantially firm, supportive, flexible material (material of laminae of 18); a substantially rigid outer support wall which extends generally upward along the lateral side portion having a standard degree of height relative to the size of the medial arch and length of insole (see Figure 7); an outer support wall to help control supination (around heel cup, also, see Figure 8); the transverse arch support system having a substantially rigid, upward support in the metatarsal portion (on the medial side portion). Irwin et al. '581 does not disclose or teach a deep heel cup support, the deep heel cup support having a downwardly concave heel cup portion providing stability, distribution of body weight, control and comfort; the heel cup having a strong supportive side wall extending upwardly from the insole heel base. Phillips '736 teaches that a foot support for a user can have a deep heel cup 32 that is downwardly concave and surrounded by an upwardly extending side wall 22 to help reduce heel roll which will in turn reduce supination. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to create a deep heel cup, such as that taught by Phillips '736, in the heel area of Irwin et al. '581, to aid in supporting the user's heel and reduce heel roll, thereby reducing supination of the user's foot. Holscher '191 teaches that a foot support for a user can have a deep heel cup (heel part of 1) that

Art Unit: 3728

is downwardly concave and surrounded by an upwardly extending side wall 3 to help lock the calcaneus bone and eliminate creeping of support of the user's heel which will, in turn, reduce supination. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to create a deep heel cup with a supporting wall, such as that taught by Holscher '191, in the heel area of Irwin et al. '581, to aid in supporting the user's heel and help lock the calcaneus bone and eliminate creeping of support of the user's heel which will, in turn, reduce supination.

Conclusion

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and are cited on form 892 enclosed herewith.

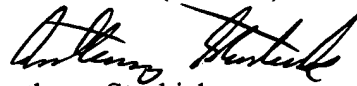
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is 571-272-4561.

The examiner can normally be reached on Monday-Thursday 8:30 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3728

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Anthony Stashick
Primary Examiner
Art Unit 3728

ADS